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Cri. WP-908-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.908 OF 2025

**1. Sau. Payal w/o. Punit Bandi @
Payal Naresh Doshi,**
Age : 34 Years, Occu: Nill.

2. Tanish s/o. Punit Bandi,
Age: 4.5 years, Occu: Education,
Minor Through His Natural Guardian
Mother the petitioner No.1.

Both R/o. C/o. Naresh Kanakkumar Doshi
279/4, Shantikunj, Kargaon Road,
Infront of Dr. C. T. Pawar Hospital,
Chalisgaon, Taluka: Chalisgaon,
Dist : Jalgaon.

...PETITIONERS

VERSUS

- 1] Punit Anil Bandi,**
Age : 40 years, Occu: Service
- 2] Shashi Anil Bandi,**
Age: 64 years: Occu: Household
- 3] Anil Chandmalji Bandi ,**
Age: 67 years, Occu; Business

All R/o. 285, Ushanagar, Extension,
Infron of Hanuman Temple, Indore,
State – Madhya Pradesh.

...RESPONDENTS

Mr. S. V. Suryawanshi a/w Mr. Sayyed Rafik Ahmed and Mr. Sayyed Arif Rafit, Advocates for the petitioners.

Mr. Sunil Varma h/f Mr. P. P. Jadhav, Advocate for Respondent Nos. 1 to 3.

CORAM : KISHORE C. SANT, J.

DATE : 15th JULY 2025.

PC :-

1. Heard the learned Advocate for the petitioners and learned Advocate for Respondents. The petition is taken up for final disposal, at the stage of admission, with the consent of the parties.

2. This Court, vide its order dated 15th July 2025, has already dictated the operative order looking to the urgency involved in the matter.

3. The petitioner-wife has come to this Court challenging the judgment and order dated 26th June 2025, passed by the learned Additional Sessions Judge, Jalgaon, in Criminal Appeal No. 45 of 2025 thereby dismissing the appeal filed by the present petitioners.

4. By way of impugned judgment and order, the learned Additional Sessions Judge, confirmed the order dated 23rd May 2025, passed by the

learned JMFC Court No.2, on an application below Exhibit-15 in PWDVA Application No.5 of 2025.

5. The petitioner No.1 is wife, and petitioner No.2 is son of respondent No.1. Respondent No.1 is the husband of petitioner No.1. Respondent No.2 and 3 are mother-in-law and father-in-law of petitioner No.1.

6. It is the case that petitioner No.1-wife and Respondent No.1-husband got married on 31st December 2014 at Indore (M.P). The couple resided in the USA. The petitioner No.2 is born out of the wedlock. It is alleged that the respondents committed domestic violence and drove the petitioner out of house. They did not allow the petitioner-wife to stay in the joint family. The wife, therefore, had to stay at her parent's house at Chalisgaon, from where she filed a proceeding under the Protection of Women from Domestic Violence Act in the Court at Chalisgaon. She has also filed proceeding under Section 498-A of IPC and under Section 125 of Cr. P. C., which are pending. Both the parties are well-educated. The husband is also an engineer from IIT. He has also

done Ph.D. The wife is also a master of science.

7. After few days of the marriage, the husband went to USA by leaving the wife in India. After few years, the petitioner also jointed him on 14th January 2015. It is alleged that there were also some instances of domestic violence took place. For some period, even the respondent Nos. 2 and 3 stayed in USA. Ultimately, the couple required to come back to India, where it is alleged that the harassmt started. On these allegations, the proceeding is filed.

8. After coming to Indian, the wife started trying to pursue further education and now she got admission to the Western Sydney University at Australia for the course of Master of Artificial Intelligence (Research) Program. Since the child is aged 4.5 years, she needs to take her child to Australia. However, for that purpose, she needs a consent of the husband for taking a child to Australia, which the husband refused. It is for that purpose, the petitioner filed an application at Exh.15, seeking direction/permission for the husband to give his consent for the child to go to Australia.

9. It is case of the petitioner that the necessary formalities are completed and the education expenses are to be borne by the father of petitioner No.1. Even the mother of petitioner No.1 has decided to go to Australia with her. The learned JMFC, however, refused the permission observing that it is not in the interest of the child to go to Australia by order dated 23rd May 2025 which made the petitioner to approach the learned Sessions Judge, Jalgaon. The learned Sessions Judge endorsed the order passed by the learned trial Court and rejected the revision. It is the case of the petitioner that it is in the welfare and it is in the interest of child to take him to Australia and since he is aged is below 5 years, therefore, his custody has to be with the mother. The petitioners have no objection for the father to be in touch with the child. The arrangement of school admission of the child is also made, and thus, there is no any hurdle except the permission/consent from the father. Father of petitioner No.1 has filed affidavit stating that he would bear the expenses in Australia for the education. One cousin of the wife also resides in Australia. Thus, she has support in Australia. It is argued that the Court ought to have considered this aspect and ought to have

allowed the application and revision.

10. The learned Advocate for Respondent vehemently argued that the parties resided in USA. The problem started only when the husband expressed a desire to come back to India. Till 2024, the couple resided well in USA. On 23rd October 2024, the husband came to India. After coming to the India, now the wife has filed present proceeding on 8th January 2025. Immediately within eight days, she filed another proceeding under Section 125 of Cr.P.C. on 14th January 2025. The husband has a strong desire to stay with the petitioner. He, therefore, filed petition under Section 9 of the Hindu Marriage Act in the Court at Indore on 18th January 2025. The wife filed one more proceeding. Thereafter, She also lodged FIR on 1st May 2025 at Chalisgaon police station just to falsely implicate the in-laws and bring upon them a pressure. In fact, the husband has desire to compromise. Initially, no affidavit of father of the petitioner was filed. Now, it is only in the appeal, the affidavit came to be filed. There is also question of jurisdiction with the Court. Both the courts have rightly considered the

circumstances and have rightly refused to allow the application and the appeal. This Court need not exercise the jurisdiction under Article 226 of the Constitution of India when no jurisdictional error is pointed out.

11. On factual aspect it is submitted that, on one hand, the wife has filed proceeding under Section 125 of Cr. P.C. seeking maintenance from the husband, and on the other hand, she has taken admission to the University in Australia. Though the father of the petitioner has given an affidavit, however, he has not shown his financial capacity to bear the expenses of education of the petitioner. While going to Australia with the child, there is no one to look after the child. It is mainly argued that four cases are presently pending in the Court in India. Out of these four cases, three are filed by the wife. The wife, after filing the proceeding, now wants to go to Australia. The husband will still have to face the proceedings. The husband also argued that the Court has to look from the view of the parents of the child under the principles of *Parens Patriae* jurisdiction. He, thus, prays for rejection of the writ petition.

12. In support of his submission, the learned Advocate for the Respondent relied upon the following judgments:

- (i) *Jai Singh and Ors. Vs. Municipal Corporation of Delhi and Anr.*¹
- (ii) *Dhaval Rajendra Soni Vs. Bhavini Dhavalbhai Son and Ors.*²
- (iii) *Surendra Pal and Ors. Vs. State of Uttar Pradesh and Anr.*³;
- (iv) *Gaurav Nagpal Vs. Sumedha Nagpal*⁴;
- (v) *Yashita Sahu Vs. State of Rajasthan and Ors.*⁵
- (vi) *Mausami Moitra Ganguli Vs. Jayant Ganguli*⁶;
- (vii) *Janaki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors.*⁷

13. This Court has considered the submissions. Presently, the question is only about the consent by the father of the child to go Australia with mother. This Court has no difficulty in accepting that the career of the wife is important. She cannot be refrained from prosecuting her studies. The child is presently below five years and the custody should normally be with the mother. In the present case, the question has arisen as the wife also wants to take son with her. The question is only whether the

1 (2010) 9 SCC 385

2 2011 SCC OnLine Guj 899

3 (2010) 9 SCC 399

4 (2009) 1 SCC 42

5 (2020) 3 SCC 67

6 (2008) 7 SCC 673

7 (2005) 2 SCC 217

mother be allowed to go with the child to Australia. The apprehension expressed by the husband are because of his concern as a father.

14. During the course of argument, this Court suggested parties to go for mutual settlement and to give the minutes. Parties have also prepared consent terms. There was a dispute about few terms. However, the Court passed an operative order. It is thereafter informed that the petitioner-wife was to join the course in the month of July – August 2025. However, because of the pendency of the proceeding, she could not join immediately and now, her course will start in the month of March – April 2026.

15. In the case of *Jai Singh and Ors.* (supra), relied upon by the respondent is about scope available to this Court for exercise of power under Article 227 of the Constitution of India. This Court need not go into the same. In the case of *Dhaval Soni* (supra), the question was about the custody of the child. The High Court of Gujarat looking to the order passed by the trial Court did not interfere with the order. In the case of *Gaurav Nagpal* (supra), it is held that the welfare of child is

paramount consideration while determining the issues relating to child custody and visitation rights. It is further held by the Hon'ble Apex Court that the court has to approach with a mature and humane approach when conflicting demands are made by the parties. In the case of ***Yashita Sahu*** (supra), writ petition was filed under Article 226 of the Constitution of India as a habeas corpus petition. The Hon'ble Apex Court held that welfare of the child is paramount consideration. It is held that a child requires love and affection of both the parents. The visitation rights needs to be given to both the parents. In the case of ***Mausami Moitra Ganguli*** (supra), the question was again about the custody of a minor child. It is reiterated that the welfare of the child is paramount consideration. In the case of ***Janaki Bhojwani*** (supra), is about the power of attorney holder to "act" on behalf of principal.

16. In the present case, the main issue is of allowing child to go with his mother to Australia and visitation rights. As already stated above, both the parties have given their proposed compromise terms. Looking to the proposed compromise terms, the court has already passed order. It

is only clarified that the operative order was dictated assuming that the petitioner-wife's course will start in the month of July – August 2025. In view of communication dated 22nd July 2025 her course will start from 2nd March 2026. The operative order thus will come into effect on the date the petitioner Nos. 1 and 2 go to Australia.

17. With this, writ petition stands disposed off.

[KISHORE C. SANT, J.]